

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VNUS MEDICAL TECHNOLOGIES, INC.

No. C-05-2972 MMC

Plaintiff

v.

DIOMED HOLDINGS, INC., DIOMED, INC.,
ANGIODYNAMICS, INC., and VASCULAR
SOLUTIONS, INC.,

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
JOINT MOTION FOR LEAVE TO AMEND
ANSWERS AND COUNTERCLAIMS;
VACATING HEARING; DIRECTIONS TO
PARTIES**

Defendants

Before the Court is defendants AngioDynamics ("AngioDynamics") and Vascular Solutions, Inc.'s ("VSI") joint "Motion for Leave to Amend Their Answers and Counterclaims to Assert Claims of Unenforceability Due to Inequitable Conduct," filed April 25, 2008. Plaintiff Vnus Medical Technologies, Inc. ("Vnus") has filed opposition, to which defendants jointly replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court finds the matter suitable for decision on the papers submitted, VACATES the hearing scheduled for May 30, 2008, and rules as follows:

1. To the extent defendants seek leave to amend to allege a claim that U.S. Patent 6,258,084 ("084 Patent") is unenforceable in light of plaintiff's alleged failure to disclose International Patent Publication No. WO 97/32532, the motion is, for the reasons stated by

Vnus, hereby DENIED.¹ Specifically, defendants fail to state why they delayed in seeking such amendment, and, more importantly, addition of such new claim on the eve of trial and well after the close of discovery would prejudice Vnus.

2. To the extent defendants seek leave to amend to allege claims that the '084 Patent and U.S. Patent 6,752,803 ("803 Patent") are otherwise unenforceable, the motion is, for the reasons stated by defendants, hereby GRANTED.² Specifically, there is no prejudice to Vnus, given such claims were the subject of discovery and would have been presented at trial but for the recent filing of petitions for bankruptcy protection by, respectively, defendants Diomed Holdings, Inc., and Diomed, Inc.

3. Defendants shall, no later than May 30, 2008, file their amended answer and counterclaims.

4. The parties are directed to file, no later than June 6, 2008 by 4:00 p.m., a joint statement setting forth the parties' respective positions as to the manner in which the inequitable conduct claims shall be tried. In such joint statement, the parties should address, inter alia, the extent to which the evidence relevant to the inequitable conduct claims overlaps with the evidence relevant to the infringement and invalidity claims.

IT IS SO ORDERED

Dated: May 27, 2008


MAXINE M. CHESNEY
United States District Judge

¹This claim is AngioDynamic's proposed Fifth Claim for Relief and VSI's proposed Fourth Counterclaim.

²These claims are AngioDynamic's proposed Third and Fourth Claims for Relief and VSI's proposed Second and Third Counterclaims.